IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 2441 OF 1992

Yeshwant K. Kulkarni .Petitioner

Vs.

Babulal I. Mulani . ... Respondent

Mr. Prathamesh Bhorgude Advocate for the Petitioner.

Mr. P. J. Thorat, Advocate for Respondent.

CORAM : D. G. DESHPANDE, J.

DATE : SEPTEMBER 19, 2006.

P.C.

. The Petitioner is the landlord under the Bombay Tenancy and Agricultural Land Act (hereinafter referred to as the Tenancy Act) Tenancy Act and the Respondent is tenant under the said Act. The Petitioner has filed a Review Application before the Maharashtra Revenue Tribunal (hereinafter referred to as MRT) and has applied for condonation of delay. That delay application for review was rejected. Before filing the Review Application, the Petitioner has also filed a Revision. That Revision was dismissed, and thereafter the Petitioner again filed Review Application. That application came to be dismissed. In fact the only contention raised by the counsel for the Petitioner goes to the root of the matter and hence, required to be accepted. Even though all the Courts below are against him and in favour of Respondent No.1 in declaring him to be a

tenant. Authorities below have lost sight of the most important aspect of the matter i.e. order of Dy. Collector and Agricultural Lands Tribunal-1 (hereinafter referred to as ALT) Satara dated 30th September 1963, which is Annexture-A of the Petition, by his order dated 26-11-1963 . That order is order in proceeding under Sec. 32 to 32 R of the Tenancy Act. Section 32 of the Tenancy Act is about tenant's issue, who have purchased land on Tiller's day, and all the subsequent sections are with reference to these right of purchase and 32 R is the provision which empowers the Collector to evict purchaser, if he fails to cultivate the land, purchased by him. Therefore, the proceeding before the Dy. Collector (Annexture-A) were wide enough to cover all provisions of Section 32 to 32 R of the Tenancy Act. In those proceedings Dy. Collector gave a declaration that Respondent was not occupying the suit land as tenant, nor as **Kabjedar**, but he was occupying as hired labour.

2. The counsel for the Petitioner contended that this order was passed by a Competent Authority i.e. the Dy. Collector and ALT, having vested his powers under Sec. 32 to 32 R of Tenancy Act. It was an order passed after due inquiry and consequently note of this order was taken in the record of right, as per

Annexture-B. But all those authorities from Tenancy Avval Karkon to MRT, in rejecting his Review Application did not at all consider the implication and impact of this order, in proceedings which were initiated at the instance of the Respondent under Sec.70-B of the Tenancy Act, as per Annexture-C. He contended that non consideration of this important and vital order by the Authorities below has resulted in serious miscarriage of justice.

3. The advocate for the Respondent tried to contend that their contentions have been considered by the authorities below, but he could not specify orders passed in that regard.

4. He has contended that the landlord was not present when the matter was heard and therefore, it might be that though there was nobody on behalf of the landlord to point out this order, there may be substance in this submission, but the fact remains that even the tenant-Respondent did not bring to the notice of the Tenancy Avval Karkoon in 1972 this order passed by the Dy. Collector in 1963. At any rate this order of the Dy. Collector and ALT is most important and vital. It is passed in the course of inquiry by the Dy. Collector and ALT and

consideration of that order becomes most important and necessary for proper adjudication of the matter. Therefore, this petition has to be allowed and the matter has to be remanded to the MRT for hearing the Revision itself afresh again.

5. This petition is allowed. The impugned order of MRT in Review Application and Revision, are set aside and quashed. The Revision is restored to the file of MRT. MRT should hear both sides again and consider in full with proper perspective the effect and impact of the order of the Dy. Collector with Annexture-A of this petition. The parties shall appear before the MRT on 16th October, 2006, with certified copy of this order. Thereafter, the MRT will decide the Revision as expeditiously as possible, within a period of six months.

6. All the records and proceedings, if called in this proceeding, be sent to MRT. Rule made absolute in the above terms.

[D. G. DESHPANDE, J.]